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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Date: **MAR 19 2014** Office: NEBRASKA SERVICE CENTER

IN RE:

APPLICATION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A).

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition on December 5, 2012 and reaffirmed that decision on motion on May 8, 2013. The AAO summarily dismissed a subsequent appeal on November 12, 2013. The matter is now before the AAO again as a motion to reconsider. The motion will be dismissed.

The regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C) provides that a motion shall be submitted on Form I-290B and it must be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding."

On motion, the petitioner has failed to submit a statement indicating if the validity of the AAO's November 12, 2013 unfavorable decision has been or is the subject of any judicial proceeding pursuant to the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C). The regulation at 8 C.F.R. § 103.5(a)(4) requires that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the petitioner's motion must be dismissed pursuant to the regulation at 8 C.F.R. § 103.5(a)(4) without regard to the claims contained within the motion. Notwithstanding this omission, the motion does not meet the requirements for a motion to reopen or a motion to reconsider.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the original decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). In essence, a motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new evidence. Compare 8 C.F.R. § 103.5(a)(3) and 8 C.F.R. § 103.5(a)(2).

In the initial decision, the director considered all of the evidence under the regulatory criteria at 8 C.F.R. § 204.5(h)(3), of which the petitioner must meet at least three. The director concluded that, with regard to the criteria the petitioner claimed to meet, the petitioner had not demonstrated that the associations of which she is a member require outstanding achievements pursuant to 8 C.F.R. § 204.5(h)(3)(ii); that the programs and advertisements did not constitute published material about the petitioner in professional or major trade publications or other major media; that the petitioner had not demonstrated the display of her work as a music instructor; that letters praising her skills did not document original contributions of major significance in the field pursuant to 8 C.F.R. § 204.5(h)(3)(v); that the petitioner had not documented that the schools where she performed a leading role enjoyed a distinguished reputation pursuant to 8 C.F.R. § 204.5(h)(3)(viii); and had provided no sales data for her compact discs to demonstrate commercial success pursuant to 8 C.F.R. § 204.5(h)(3)(x). On motion, the director concluded that the two new documents did not relate to the ten criteria and did not overcome the bases of the director's denial.

On appeal, the petitioner asserted that the director erred by considering only the evidence relating to her work as an instructor and made general assertions about the challenges for a woman artist in her home country. In support of the appeal, the petitioner submitted additional letters that did not address the 10 regulatory criteria and two licenses, one of which postdated the filing of the petition. The AAO dismissed the appeal, noting that the petitioner had specifically asserted that she was a

music instructor of extraordinary ability, that she had not identified an error of law or fact in the director's decision, and that her new evidence did not relate to the ten regulatory criteria.

The petitioner's motion to reconsider is dismissed. On motion the petitioner has not sufficiently stated the reasons for reconsideration, or supported the reasons with pertinent precedent decisions showing that the AAO's November 12, 2013 decision was based on an incorrect application of law or USCIS policy. *See* 8 C.F.R. § 103.5(a)(3). The petitioner in the motion broadly asserts: "I strongly believe that I am qualified to be U.S.A. immigrant based on my extraordinary ability. I kindly request a motion to reconsider a decision." It is the AAO's decision that the petitioner seeks to reopen and she did not establish that the AAO's prior summary dismissal was based on an incorrect application of law or USCIS policy. Rather, she asserts that she submitted the requisite evidence in response to the director's August 2, 2012 request for additional evidence. Even if the AAO were to revisit the director's decision, the petitioner does not explain how the director erred in law or in fact. Specifically, while she asserts generally that she can be profitable in the United States, she cites no legal authority suggesting that potential profitability, by itself, is a ground for eligibility for the classification sought. The petitioner does not address the regulatory eligibility criteria for the classification sought and explain how the director incorrectly applied law or USCIS policy. For example, she does not cite any legal authority for the proposition that the director erroneously concluded that the associations of which she is a member do not require outstanding achievements or even point to evidence that the associations do, in fact, have such membership requirements. As another example, she does not cite any legal authority to support a finding that printed programs and advertisements constitute published material in a qualifying medium. Thus, the filing does not meet the requirements of a motion to reconsider, which must be supported by any pertinent precedent decisions to establish a prior incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3).

While the petitioner did not claim to be filing a motion to reopen, she did submit supporting documentation. That evidence, however, consists of documents she previously submitted in response to the director's request for evidence that the director already considered in the decision originally denying the petition.

In conclusion, the motion to reconsider is dismissed because the petitioner has not submitted a statement regarding any judicial proceeding relating to the validity of the AAO's November 12, 2013 unfavorable decision and because the petitioner's filing does not meet the requirements of a motion to reconsider.

ORDER: The motion is dismissed, the decision of the AAO dated November 12, 2013 is affirmed, and the petition remains denied.